STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 14, 2003 **Agenda ID #2882**

TO: PARTIES OF RECORD IN RULEMAKING 02-01-011

This is the draft decision of Administrative Law Judge Pulsifer. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG: avs

Decision **DRAFT DECISION OF ALJ PULSIFER (Mailed 10/14/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 2, 2002)

OPINION DENYING PETITIONS TO MODIFY DECISIONS (D.) 03-04-057 and D.02-03-055

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OPINION DENYING PETITIONS TO MODIFY DECISIONS (D.) 03-04-057 and D.02-03-055

By this decision, we resolve two related pleadings: (1) the Petition to Modify D.03-04-057[1] and the Petition for Clarification of D.02-03-055.[2] We deny both petitions, but provide opportunity for further comment regarding an alternative solution to the problems posed by parties' pleadings.

I. Positions of Parties

A. Position of Joint Petitioners

A joint petition to modify D.03-04-057 was filed on August 1, 2003 by SBC Services (SBC), University of California/California State University (UC/CSU), and California Large Energy Consumers Association (CLECA) (Joint Petitioners). The Petition was filed to prevent Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E) (*i.e.,* "utility distribution companies [UDCs]) from implementing a new policy which Petitioners claim would require pre-suspension direct access (DA) customers to install a second meter and establish a second, bundled account in the ordinary course of business whenever a meter change is required. Joint Petitioners believe this new requirement is based on an untenable interpretation of D.03-04-057, a decision establishing certain ground rules when customers want to move DA accounts.

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[1] D.03-04-057 granted the Petition to Modify D.02-03-055 filed by Albertson's Inc. to allow direct access (DA) customers to add new locations or accounts to DA service provided there is no net increase in the amount of load served under DA as of September 20, 2001.

[2] D.02-03-055 set forth the Commission's policies concerning suspension of DA based on a September 20, 2001 suspension date.

Thus, Petitioners ask that the Commission modify D.03-04-057 to affirm that second meters and second, bundled accounts are not required when meters are changed. Moreover, because of the expense, increased operational complexity, failure risk associated with increased operational complexity, and disruption caused by this policy, Petitioners ask that the Commission act expeditiously. Pursuant to Rule 47, Joint Petitioners specifically request that D.03-04-057 be modified by changing the requirements of Rule 6 (in Appendix A, p. 2) as follows:

> Rule 6 should not be construed to prevent, after September 20, 2001, the installation of meters or meter-reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers, <u>including meter changes and upgrades caused by normal increases in load at pre-suspension accounts</u>. (Proposed text additions underlined.)

The Joint Petitioners argue that the UDCs erroneously base their proposed two-account, two-meter policy on language in D.03-04-057 regarding "no net increase in DA load." The Joint Petitioners argue this language was adopted by the Commission merely to ensure that the ability to move the location of DA-eligible accounts would not result in gaming the suspension order (*i.e.,* D.02-03-055), but that the issue of normal load changes, at stationary accounts was simply not before the Commission in D.03-04-057. Joint Petitioners believe their requested modification to Rule 6 will prevent the UDCs from implementing the two-meter, two-account policy for normal increases in load.

The economic and administrative disruption caused by the two-meter, two-account policy as identified by the Joint Petitioners fall into two categories: (1) expense; and (2) increased operating complexity and inefficiencies.

Joint Petitioners cite examples of the costs and disruptions that a two-meter, two-account policy would have on the UC/CSU system. As discussed in the declaration of Len Pettis, both UC/CSU, the systems are adding significant new facilities to existing campuses over the next decade to meet mandated enrollment growth. (Pettis Decl.¶ 3.) Typically, these facilities are infill buildings that are not proximate to a campus' main service connection point. The campuses typically own the distribution system within the campus boundaries that supplies electricity to individual campus facilities. The normal practice of the campuses would be to serve these new facilities through the campus-owned distribution systems. Joint Petitioners claim the UDCs' policy would require that a campus install not only a separate meter but a separate feed to new facilities that would likely cost millions of dollars for each new facility.

For SBC, as claimed in the declaration of John Keller, more than 15% of SBC's DA loads will require a second meter this year. (Keller Decl., ¶ 9.) The additional energy costs to SBC will be $3.6 million annually, which represents only the additional energy charges from the second account not being billed as DA service. Keller claims the SBC hardware and installation costs for the second meter and panel will increase by approximately $460,000 for the work scheduled for 2003.

In addition, the second meter proposal will require a second House Service Panel (HSP) to keep the two systems separate, as well as additional equipment which will cost from $50,000 to $300,000 per project.

B. Position of SCE

SCE opposes the Petition to Modify D.03-04-057.[3] SCE denies Joint Petitioners' claim that SCE relied on the "no net increase in DA load" language in D.03-04-057 to implement its procedures for increases in DA load. SCE argues that its procedures are intended to implement the Commission's "standstill approach" to DA load and to prevent "add-ons of new DA load," as promulgated in D.02-03-055, prior to D.03-04-057.

SCE also denies Joint Petitioners' claim that SCE is "taking the position that routine meter changes can trigger the loss of DA service" and that SCE is requiring DA customers to install a second bundled account "whenever a meter change is required." (Jt. Petition, p. 1.) SCE argues that it has implemented procedures to respond to requests by DA customers to "significantly increase" DA load, which may or may not require a meter change.[4] In fact, SCE believes existing metering for most large customers, is adequate for the increased load.

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[3] SCE filed its response in opposition to the Joint Parties' Petition on September 2, 2003. SCE also filed a third-round reply in support of its own Petition for Clarification on September 15, 2003. The Joint Petitioners, on September 18, 2003, filed a motion to strike the third-round reply, arguing that SCE failed to obtain advance permission and that the reply improperly challenged the "standstill principle." SCE filed a response to the Joint Motion to strike on September 25, 2003. SCE argues that its failure to obtain advance permission was inadvertent, and no party is prejudiced thereby. SCE denies that it is challenging the "standstill principle." The motion to strike the third-round reply is denied. SCE should have asked for permission in advance pursuant to Rule 47(g), although SCE did belatedly seek permission after the fact to file the third-round reply. Its receipt will not prejudice any party. Permission to receive the third-round response is granted.

[4] SCE's proposed implementation procedures are discussed in the following section of this order relating to SCE's Petition for "clarification" of D.02-03-055.

SCE does not agree with the Joint Petitioners' conclusion that the Commission limited its prohibition of new DA load to only new accounts. SCE argues that the Commission's "standstill approach" was intended to prohibit growth in DA load, and that the term "add-ons of new load" clearly contemplates adding load to an existing DA account, not solely opening a new account. SCE argues that allowing DA accounts to add-on new load without limitation would be a giant loophole in the Commission's "standstill approach" and would render the entire approach meaningless.

As a related matter, SCE filed on August 4, 2003, a Petition for Expedited Clarification of D.02-03-055." SCE seeks clarification from the Commission regarding the appropriate procedures for implementing the "standstill approach" adopted in D.02-03-055 in connection with requests received from DA customers to increase their DA load. SCE seeks the Commission's approval of its proposed procedures to respond to such requests. SCE seeks timely resolution of this issue to minimize potential future costs increases to DA customers if it becomes necessary for them to reconfigure their electric facilities to separate their existing DA load from any significant incremental load.

Pursuant to Assembly Bill (AB) 1X (Cal. Water Code, Section 80110), which requires that "the right of retail end users to acquire service from other providers shall be suspended until the department [DWR] no longer supplies power hereunder," the Commission issued a series of decisions implementing DA suspension. On September 20, 2001, the Commission issued D.01-09-060, suspending the right of customers to acquire DA service on or after September 21, 2001. Subsequently, the Commission issued D.02-03-055, which confirmed the September 21, 2001 suspension date and articulated a general

"standstill approach" which enabled current DA customers to preserve their DA service while assuring that overall DA load would not increase.

Under the Commission's "standstill approach," DA load is not permitted to grow, "apart from normal load fluctuations." However, in attempting to implement the "standstill policy," SCE argues that it is difficult to differentiate "normal load fluctuations" (due to factors such as weather changes or seasonal businesses) from the "addition of new load" (due to factors such as the addition of new equipment). Therefore, SCE is proposing to use an objective criterion (500 kilowatt (kW) or 10% threshold) that it believes is large enough that it will not be confused with a "normal fluctuation" in load. SCE selected a 500 kW threshold because an increase of 500 kW is equivalent to adding a large industrial customer to SCE's system.

SCE explains that it files its Petition over a year after D.02-03-055 was issued because DA load growth and requests for increases in DA load did not occur immediately. Given the increase in the volume of requests over the past year, however, SCE developed certain interim procedures to respond to such requests, and is now filing its petition to obtain the Commission's approval of those procedures, as summarized below:

- Determine when additions of load on existing DA accounts will result in a "significant increase" is defined as an increase greater than 500 kW or 10% over current load, whichever is greater.
- Where it is determined that the load on a DA account has significantly increased (or will significantly increase), provide the customer with the option of returning to bundled service or separately metering the new load as a new bundled service account.

- Monitor cumulative DA load for large power customers. If it is determined that DA load is increasing significantly (*e.g.*, an increase of 10% above the level of DA load as of the beginning of 2003) then re-evaluate these procedures.
- Exclude DA customers that maintain DA demand of less than 500 kW from the second meter requirement.

C. Position of PG&E and SDG&E

On September 2, 2003, PG&E and SDG&E (the utilities) filed a joint response to the Petition to Modify D.03-04-057, and on September 3, 2003, filed a joint response to the SCE Petition to Modify D.02-03-055. In their joint response to SCE's Petition, the utilities agree with SCE that the Commission's DA suspension decisions limit load growth on existing DA accounts to "normal usage variations" and "normal load fluctuations," but disagree with SCE in terms of how to address the DA load growth that exceeds such "normal" variations.

PG&E and SDG&E agree that SCE's proposed approach would reduce administrative burden to the extent it focuses load growth limits only on the largest DA customers. PG&E and SDG&E oppose the SCE approach, however, arguing that it still would require considerable "policing" by the utilities, and would require uneconomic load splitting expenses to be incurred by large customers. PG&E and SDG&E thus ask the Commission to modify its "standstill approach" to eliminate restrictions on DA load growth on accounts in existence and under contract on September 20, 2001, in view of significant cost impacts on individual customers of splitting load. The utilities continue to support the prohibition in D.02-03-055, however, on *new* DA accounts being added after September 20, 2001. The utilities thus propose language changes to D.02-03-055 for this purpose.

PG&E and SDG&E, however, do not believe modification of D.03-04-057 is necessary or appropriate to accomplish this result. D.03-04-057 is a decision modifying one aspect of D.02-03-055 and does not change the underlying "standstill" policy adopted in D.02-03-055. While the utilities do not believe any changes to D.03-04-055 are necessary, they propose that the Commission convene a Rule 22 Working Group meeting to determine whether the affidavit developed by the utilities to implement D.03-04-055 needs further revision in light of a modification of the DA load growth rules.

The utilities claim their proposed D.02-03-055 modification to the Commission's "standstill" policy would minimize monitoring and policing of DA load by the utilities, while accommodating "reasonable" load growth. PG&E and SDG&E propose that load on DA accounts be allowed to grow to the point where the distribution facilities serving the customer (*i.e.*, wires, transformers, panels) need to be upgraded (referred to as a "panel upgrade") to accommodate the increasing load. Once a panel upgrade is requested, the customer would be required to physically divide the load allowing the original load amount as of September 20, 2001 to remain on DA with the increment being metered separately as a bundled service load.

Even though the utilities agree with petitioners that load on DA-eligible accounts should be allowed to grow, the utilities disagree with many of the statements and characterizations made in the Petition to Modify D.03-04-057. The utilities argue that petitioners obscure the real issue of allowable DA load growth by alleging that the utilities require a DA customer to install two meters whenever it changes its existing meter. At least for PG&E and SDG&E, however, only when a customer seeks a panel upgrade (which often does not require an upgraded meter) do the utilities seek to require that loads be split between DA

and bundled service charges. A panel upgrade means that significant load growth has occurred. The utilities would allow DA load to fluctuate within the limits of the capacity of distribution lines and equipment serving the load which PG&E and SDG&E believe more than accommodates daily and seasonal load variations.

The utilities argue that Petitioners' proposed change to Rule 6 in D.03-04-057 does not address the core question, namely, determining the allowable load growth for DA accounts. The proposed Rule 6 change would allow for " the installation of meters or meter reading equipment as necessary to initiate direct access service for eligible customers, or the replacement or upgrade of existing meters for existing direct access customers, including meter changes and upgrades caused by normal increases in load at pre-suspension accounts."

The utilities argue that granting this modification will lead to considerable confusion and new disputes over the meaning of the word "normal." The proposed modification to D.03-04-057 moreover, ignores the provisions of D.02-03-055 limiting DA load growth to "normal load fluctuations" and "normal usage variation." D.02-03-055 makes it clear that existing DA load growth is limited to "normal load fluctuations" or "normal usage variations" on existing DA accounts. New accounts are prohibited. Subsequent clarifications in D.03-04-057 state that that "normal load fluctuations" means "daily and seasonal load fluctuations" and that the Commission standstill policy is aimed at maintaining DA levels as they existed on September 20, 2001. Thus, the utilities argue, adopting the proposed modification to D. 03-04-057 would create an internal inconsistency with D.02-03-055.

D. Position of Other Parties

On September 3, 2003, other parties also filed responses to the SCE Petition.[5] The Joint Parties (AREM and Albertson's) oppose the SCE proposal, but support the modified approach proposed by PG&E and SDG&E in response to the petition of SBC *et al.* to modify D.03-04-057. The Joint Parties claim that complying with SCE's two-meter policy would cause DA customers to incur significant costs without any corresponding benefit. The Joint Parties oppose SCE's Petition to Clarify D.02-03-055 and instead favor lifting the restrictions on load growth for "grandfathered" DA accounts[6] as suggested by PG&E and SDG&E.

The Joint Parties view the PG&E/SDG&E approach to the DA load growth issue as being simple, easy to implement, and less confusing than the SCE approach. In addition, the Joint Parties ask the Commission to clarify that the DA suspension rules should not be construed to prevent changes in the "normal course of business" including but not limited to changes in DA account or meter numbers, implementation of temporary accounts, or consolidation of multiple DA-eligible accounts into a smaller number of new DA accounts. Joint Parties argue that such changes in the identification of DA accounts do not affect the total amount of DA-eligible load and thus should not trigger a loss of a

[5] Responses to the SCE Petition were filed by SBC Services, Inc., University of California/California State University, and California Large Energy Consumers Association (collectively, the "Joint Petitioners"); Pacific Gas and Electric Company and San Diego Gas & Electric Company; Strategic Energy L.L.C.; and the California Independent Petroleum Association.

[6] "Grandfathered" DA accounts refer to those accounts in effect prior to February 1, 2001, the effective date of AB 1X.

customer's DA rights, regardless of whether the Commission adopts the SCE approach or the PG&E/SDG&E approach.

Strategic Energy also opposes the SCE proposal and supports the PG&E/SDG&E approach. Strategic Energy argues that SCE's proposed two-meter policy would be unworkable and unenforceable with respect to splitting load between bundled and DA service. Strategic Energy argues that SCE has not demonstrated that DA load growth within its service territory has exceeded levels attributable to "normal load fluctuations" that are allowable under Commission rules, thus calling into question whether there is any shortcoming in the existing DA rules. Strategic Energy notes that the DA load figures posted on the Commission's website show that statewide DA load in May 2003 is virtually the same as in January 2002.

California Independent Petroleum Association (CIPA) also opposes the SCE proposal at least until certain issues are clarified or modified. CIPA characterizes the SCE proposal as establishing a precedent ultimately requiring CIPA members to bifurcate their load growth and begin receiving separate bills as bundled customers. CIPA views such a result as inconsistent with the Commission's original intention, and argues that this proposal appears to have serious implications for self-generation. For example, if a gas producer installs a self-generation facility and zeroes out load growth, it is unclear whether the producers should be required to pay any CRS. CIPA also questions when the clock would start for the purposes of assessing load growth under the SCE proposal.

II. Discussion

Because of their interrelated nature, we address herein: (1) the SCE Petition to Clarify D.02-03-055, (2) the Joint Parties' Petition to Modify D.03-04-057 and (3)

the Joint Utilities' Response to the above pleadings in which it proposes alternative modifications to D.02-03-055.

A. Petition to Modify D.03-04-057

We agree with Petitioners that second meters and second bundled accounts should not be required for DA customers simply because meters are changed for any reason. Yet, we disagree that Petitioners' claim that modification or clarification to D.03-04-057 is necessary or warranted to "make clear" that such is the Commission's policy. Existing Commission rules already articulate this policy clearly. Moreover, based on the pleadings by the UDCs, there is no indication that they are seeking to require DA customers to install second meters with bundled accounts any time a meter is changed. SCE denies that it is requiring DA customers to install a second bundled account "whenever a meter change is required," but only seeks to require a second bundled account to respond to requests by DA customers to "significantly increase DA load" based on criteria defined in its proposal.

Joint Petitioners infer that SCE's rationale for requiring a second meter is based on a misinterpretation of D.03-04-057 regarding "no net increase in DA load." Petitioners argue that because the issue of "normal load changes" at stationary DA accounts was not before the Commission in D.03-04-057, no basis is provided in that decision for SCE's practice of requiring a second meter based on a "significant increase " in DA load at a stationary DA location.

SCE, however, does not rely on the "no net increase in DA load" language in D.03-04-057 as a basis for its second-meter policy. SCE relies instead upon the Commission's "standstill approach" to prevent "add-ons of new DA load" as required by D.02-03-055. Thus, even if we granted the modifications to D.03-04-057 sought by Petitioners, the "standstill" requirements of D.02-03-055

would still prohibit increases in DA load in excess of September 20, 2001 authorized levels. D.02-03-055 prohibits load on existing DA accounts from growing substantially above levels in effect as of September 20, 2001, with the only allowable growth on these accounts being limited to "normal usage variations." In this regard, D.02-03-055 states that:

> We favor a balanced approach which allows existing direct access customers to continue in the direct access market, *but limits additional load moving to direct access to load changes associated with normal usage variations on direct access accounts in effect as of September 20, 2001.* . . . Under the standstill approach . . . we will permit assignments and renewals, but not add-ons of new load. D.02-03-055, mimeo., at 18. (Emphasis added.)

Likewise, Finding of Fact 12 in D.02-03-055 states:

> It is reasonable to interpret a September [21], 2001 date for suspension of direct access to mean that the level of direct access load *as of that date* (irrespective of whether power flowed under any direct access contract) *should not be allowed to increase, apart from normal load fluctuations.* (Emphasis added.)

In addition, in AB 117, signed into law on September 24, 2002. (Stats 2002, ch. 838), the Legislature amended Public Utilities Code Section 366.2 to add subsection (d) in order to clarify its intent concerning the prevention of cost shifting relating to DWR cost recovery. This subsection states:

> "It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the [DWR's] electricity purchase costs, as well as electricity purchase contract obligations incurred. . . that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature *to prevent any shifting of recoverable costs between*

> *customers*." (Pub. Util. Code, § 366, subd. (d)(1).) (Emphasis added.)

Limiting load growth on existing DA accounts in this manner is required to "alleviate the significant cost-shifting of DWR costs onto bundled service customers." D.02-03-055 *mimeo*., at 18. We confirmed this load growth limitation by clarifying in D.03-04-057 that the "standstill" policy is aimed at "maintaining the then-current levels of DA" as of September 20, 2001. (D.03-04-057, *mimeo*., at 14.) We also clarified that "normal usage variations" means "daily and seasonal load fluctuations." (D.03-04-057, *mimeo*., at 17.) Thus "normal load variations" cannot refer to growth of load on DA accounts from expanding customer operations, but instead refers to the daily and annual load shape or profile based on operations as of September 20, 2001.

Thus, we conclude that the modifications sought by Petitioners would violate the "standstill principle" and related statutory requirements to suspend DA. Moreover, the modification of D.03-04-057 proposed by Petitioners is overly broad and vague. Petitioners' proposed modification refers to "meter changes and upgrades caused by normal increases in load." Yet, Petitioners fail to define what constitutes "normal" increases in load, as distinguished from "abnormal" or "supernormal" increases. Given this ambiguity, allowing DA billing to apply to "normal increases in load" fails to provide safeguards to enforce the mandated suspension of direct access as adopted in D.02-03-055. To the extent such "normal" increases in load fail to delineate the constraints imposed by our September 21, 2001 suspension rules, permitting such load increases to qualify for direct access would violate our statutory mandate to suspend direct access, and related Commission decisions implementing that suspension. Accordingly, we deny the Petition to modify Rule 6 of D.03-04-057.

Joint Petitioners suggest that the utilities may be relying on a typographical error in Conclusion of Law of D.03-04-057. Although we do not believe SCE relied on a typographical error for its position, we do agree that a typographical correction is appropriate to insert the word "not" into Conclusion of Law 8 in D.03-04-057 as follows:

> "The limitations on DA eligibility of load from replacement or relocation of facilities as adopted in the modifications herein to D.02-03-055 are <u>not</u> intended to prohibit load changes associated with normal usage variations for accounts at other locations that are eligible for DA as of September 20, 2001." (Correction underlined.)

This typographical correction, however, has no substantive effect on the disposition of either of the Petitions at issue here.

B. SCE Petition to Modify D.02-03-055

While we agree with SCE that unlimited load growth experienced by DA customers that exceeds authorized limits in effect as of September 20, 2001, beyond "normal load fluctuations," does not qualify for DA service, we disagree with the means by which SCE proposes to implement its "two-meter" policy.

As noted by opponents, there are detrimental effects in terms of the cost, disruption, and confusion that the second metered account would cause. SCE provides no refutation that at least some additional customer cost and disruption would likely result from the installation of second meters, even if the specific magnitude may be questioned.

Moreover, while SCE's procedures would impose additional burdens on DA customers, its proposed criteria for installing second meters fail to correspond to DA suspension levels. SCE's proposed procedures to install a second meter would merely be activated upon detection of a "significant

increase" in DA load in any given account beyond "current" levels. SCE would separately meter "new load" that is in excess of 500 kW or 10% of "current load."

It is unclear as to what data SCE would use to determine "current load" or to what extent "current load" for any given authorized DA account is an appropriate baseline proxy for the maximum level of DA contract load as of the September 21, 2001 suspension date. SCE's mere reference to "current levels" of load provides no means of determining whether such load levels necessarily correspond to the authorized contract limits in effect as of September 20, 2001, taking into account "normal load fluctuations" as allowed under existing suspension rules. A more meaningful approach would be to measure growth in DA load in relation to the authorized maximum level of DA load as of the September 20, 2001 suspension date.

Moreover, by applying load growth criteria on an account-by-account basis, SCE's proposed approach could fail to capture offsetting load fluctuations among multiple accounts or meters within a single facility or among different facility locations operated by a single DA customer within the SCE service territory. Thus, load changes from a single metered DA account may change by 10%, thus triggering a second bundled service meter requirement even though offsetting decreases at other DA meters or locations operated by the DA customer may yield a lower net change in load.

Moreover, it is not clear why the segregation of load between DA and bundled cannot be done by the UDC by attributing aggregate metered load in excess of a predetermined allowable DA suspension level to bundled service.

While we favor the most efficient and fairest possible overall solution (both to customers and the utility) in implementing the "standstill principle," we

also require that service be billed in accordance with the applicable suspension requirements.

C. Proposed PG&E/SDG&E Modifications to D.02-03-055

While the modifications to D.02-03-055 proposed by PG&E and SDG&E would entail less cost and disruption to customers, we still find the PG&E/SDG&E proposal would conflict with the statutory suspension of direct access and would risk cost shifting prohibited by D.02-03-055, and thus, in violation of AB 1X and AB 117. Although the PG&E/SDG&E proposal would prevent DA customers from adding new accounts for DA service beyond the DA load in effect as of September 20, 2001, those at existing locations and meters would be allowed to grow beyond September 20, 2001 levels. The current policy of the Commission, as discussed above, however, limits load growth on both existing DA accounts as well as prohibiting new DA accounts after September 20, 2001.

Under the PG&E/SDG&E proposal, a second meter would still be required for certain incremental load growth, but only at the point where distribution facilities capacity growth required a panel upgrade. PG&E and SDG&E concede, however, that a panel upgrade signifies that peak load has grown substantially, typically more than 10 %. In some cases, the growth probably exceeds what might be considered a "normal load fluctuation." Thus, the PG&E/SDG&E proposal would allow DA load to grow beyond legally permissible limits under the "normal load fluctuation" standard in violation of the statutory suspension mandate.

Such proposed modifications would fundamentally change the "standstill principle" adopted in D.02-03-055 to implement DA suspension. Parties have not justified the legal permissibility of lifting the suspension on DA

load growth under the statutory requirements of AB 1X and AB 117. Our DA "standstill" policy, adopted in compliance with these statutory requirements mandating the suspension of DA, prohibits cost shifting among customer groups, and holds DA load responsible for its fair share of DWR and related utility procurement costs. Yet parties opposed to SCE's proposal do not adequately address the adverse impacts on bundled customers as a result of cost shifting if DA load growth limits on existing accounts were eliminated.

PG&E and SDG&E argue that the resulting incremental shift of DWR costs should be "relatively insignificant" for bundled customers, "*provided that the DA `load pays its share of the cost responsibility surcharge (CRS).*" The utilities also argue that any cost shifting that results from a capped DA CRS will be temporary and ultimately, DA loads will pay their full share of DWR's costs over time even if one assumes that the incremental DA load would otherwise have been bundled load if the "no growth" policy were maintained.

Yet, we believe that the adopted processes for measuring and assessing DA cost responsibility would no longer adequately prevent cost shifting if we were to eliminate load growth suspension, as proposed. With restrictions on DA load growth lifted, customers with both bundled service accounts and DA accounts could readily add or transfer load to the DA account rather than the bundled service account, where feasible.

Removing growth limits on existing DA accounts would conflict with the DA-in/DA-out cost paradigm that is intended to keep bundled customers indifferent between DA suspension as of July 1, 2001 versus September 20, 2001. Likewise, retention of the 2.7 cents/kWh surcharge, as adopted in D.03-07-030 was predicated on payback of the DA cost responsibility undercollection no later than the termination date of the DWR contracts. The payback analysis, in turn,

relied upon the indifference cost approach between authorized DA load levels at September 21, 2001 versus July 1, 2001 as adopted in D.02-11-022. Thus, the assumptions underlying D.03-07-030 regarding the adequacy of the 2.7 cents cap could be undermined by removal of DA suspension limits.

While more DA load would pay the 2.7 cents surcharge, unrestricted growth in DA load would simultaneously increase the DA cost responsibility undercollection (to the extent actual DA cost responsibility exceeds 2.7 cents/kWh). The incremental 2.7 cents/kWh surcharge collections thus would not capture the increased DA undercollection triggered by the incremental DA load growth that is based upon *total* cost shifts under a DA-in/DA-out comparison, not just the fraction covered by the surcharge cap. Without adequately addressing the bundled customer cost impacts of removing DA load restrictions, proponents have failed to provide a legally sound basis for the requested modifications lifting the limits on new DA load.

We therefore decline to grant the requested modifications either to Rule 6 of D.03-04-057 or to D.02-03-055 in view of our statutory obligations to prevent cost shifting and to hold DA load responsible for its "fair share" of DWR costs. Likewise, we find the proposed procedures offered by SCE, as well as the alternative offered by PG&E/SDG&E inappropriate as a means of enforcing the "standstill principle."

D. Addressing "Load Growth" Consistent with the "Standstill Principle"

With the denial of the respective modifications proposed by the parties, we are left with the unresolved question of how to deal with potential increases in DA load that grow over time to a point beyond "normal load fluctuations." Strategic Energy notes statistics indicating that the overall level of DA load has not grown appreciably in the past year. We believe, however, that some

additional Commission guidance is warranted in terms of what levels of load growth would exceed permissible limits under mandated suspension rules and what means should be used to identify and bill such load.

We favor a practical process for applying and enforcing the suspension rules that is fair to DA customers while guarding against cost shifting to bundled customers. A process is needed, first of all, to determine whether, or to what extent, DA customer load increases for existing accounts can be attributed to "normal load fluctuations," as referred to D.02-03-055.

Given the current dispute among parties, however, a further record is necessary to determine a process for distinguishing variances in DA load levels authorized under contracts in effect as of September 20, 2001, that reasonably constitute "normal load fluctuations" versus "load growth" that exceed the limits under adopted suspension rules. PG&E and SDG&E concede that their proposed alternative approach, permitting unrestricted load growth up to the point where a panel upgrade is needed "probably exceeds what one might consider a 'normal load fluctuation.' " Thus, we decline to rely on these proposed measures as a basis to define "normal load fluctuations."

To the extent that load on existing accounts grows beyond presuspension levels, a process is needed to consider where "normal load fluctuations" end and impermissible new growth begins. Beyond a reasonable allowance for permissible fluctuations, additional growth in DA load would be attributable to bundled service. We shall provide for further comments to develop the record on how to deal with this issue.

While we agree with SCE's ultimate goal of adhering to the "standstill principle" in D.02-03-055 regarding DA suspension, we disagree with its proposed method of determining what constitutes "excess" load. We also

disagree with SCE's approach of requiring separate metering for such "excess" load. We are not convinced that requiring an extra meter as proposed by SCE is the most efficient or beneficial way by which load growth in DA accounts beyond the level authorized as of September 20, 2001 could be recognized and billed under bundled service tariff rates.

A maximum authorized level of DA load eligible to receive DA CRS billing does not necessarily require actual metered data to the extent that a process can be developed to establish predetermined maximum levels of DA load, incorporating allowances for "normal load fluctuations," as discussed above. Since allowable DA load is an artifact of suspension rules based upon authorized DA contract levels in effect as of September 20, 2001, a reasonable predetermined cap on such maximum allowable DA load levels would obviate the need for forcing DA customers to incur the costs and burdens of second meters.

SCE has not explained why the utilities cannot incorporate modifications into their own billing and accounting systems to subtract out a predetermined allowable DA load cap based upon DA amounts authorized as of the September 20, 2001 suspension date, taking into account "normal load fluctuations." Then, to the extent the total metered sales from the DA account exceed the authorized predetermined suspension amount as of September 20, 2001, the residual load balance subject to bundled service billing could be mathematically calculated without the need for a second meter. The incremental load in excess of the authorized suspension load level could then be billed at the equivalent bundled service rate applicable to the bundled tariff counterpart to the DA customer in question. We therefore solicit comments on the feasibility of such a solution.

We shall also provide parties an opportunity to comment on appropriate means by which a provision for "normal load fluctuations" may be quantified, either as a percentage factor, or other means, taking into account seasonal variations or other relevant influences on "normal" load swings. We understand that parties preferred solution is simply to dispense with DA load growth limitation, or at most, to limit them only in the loose manner suggested by PG&E and SDG&E. Yet, for the reasons discussed herein, that solution is not acceptable. Parties should therefore provide an analysis through which a reasonable provision for "normal load fluctuations" could be quantified for use in enforcing the "standstill principle."

Upon review and receipt of those comments, we shall provide further direction regarding a process through which the "standstill" principle can be enforced as DA load charges over time.

III. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

IV. Assignment of Proceeding

Carl W. Wood and Geoffrey F. Brown are the Assigned Commissioners and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

V. Findings of Fact

1. In D.03-04-057, the Commission clarified that the "standstill" policy is aimed at "maintaining the then-current levels of DA" (*i.e.*, as of September 20, 2001).

2. In D.03-04-057, the Commission clarified that "normal usage variations" means "daily and seasonal load fluctuations," and thus does not include growth of load on DA accounts from expanding customer operations, as proposed by Petitioners' modification.

3. Joint Parties' proposed modification to Rule 6 of D.03-04-057 fails to provide a definition of "normal increases in load" that would permit enforcement of the "standstill principle" adopted in D.02-03-055.

4. Granting the requested Modification of Rule 6 of D.03-04-057 would not address the concerns raised by Joint Parties opposed to SCE's two-meter policy.

5. The proposal of PG&E and SDG&E (*i.e.,* to permit DA load growth up to the point where capacity requires a panel upgrade) would violate the standstill principle under D.02-03-055.

6. A panel upgrade request signifies that peak load has grown substantially, typically more than 10 %. At least in some cases, such growth probably exceeds what might be considered a "normal load fluctuation."

7. SCE's proposal would impose additional burdens on DA customers, but its proposed criteria for installing second meters fail to relate to any relevant benchmark that corresponds to September 20, 2001 DA suspension levels.

8. SCE's reference to "current levels" of load in its proposed process for second meters is unduly vague and provides no means to determine whether such levels necessarily correspond to the authorized contract limits in effect as of September 20, 2001, taking into account "normal load fluctuations" as allowed under existing suspension rules.

9. SCE has not justified that its proposed modifications are an appropriate way to implement the Commission's standstill principle, or that the modifications are fair to DA customers.

VI. Conclusions of Law

1. The modifications to D.03-04-057 sought by Petitioners would violate the "standstill principle" adopted in D.02-03-055 and related statutory DA suspension requirements of AB 1 X and AB 117.

2. The modifications of D.03-04-057 proposed by Petitioners is overly broad and vague with respect to the definition of "normal load growth."

3. Without adequately addressing the bundled customer cost impacts of removing DA load restrictions, parties have not justified the proposed modification to D.03-04-057.

4. The Joint Parties' Petition to Modify Rule 6 of D.03-04-057 should be denied, but the typographical error in Conclusion of Law 8 in that decision should be corrected.

5. A further record is needed before additional modifications of Commission decisions and/or utility tariffs can be considered regarding measures to enforce the Commission's standstill principle.

6. SCE has failed to justify that its proposed procedures for requiring a second metered account for DA customers is an appropriate way to enforce the Commission's "standstill" rule.

7. SCE's Petition to clarify D.02-03-055 should be denied.

8. PG&E and SDG&E have failed to justify that their alternative criteria for requiring DA customers to install a second meter are consistent with the Commission's "standstill principle."

9. The further record that is needed relates to means by which a reasonable provision for "normal load fluctuations" can be quantified and distinguished from impermissible load growth that would violate statutory DA suspension requirements. A further record is also needed on the most appropriate and

efficient measures to implement such distinctions in a way that is fair to customers and avoids cost shifting.

O R D E R

IT IS ORDERED that:

1. The Petition to Modify Rule 6 in Decision (D.) 03-04-057 filed by SBC Services, University of California/California State University, and California Large Energy Consumers Association (CLECA) (Joint Petitioners) is hereby denied.

2. The following typographical correction is hereby made to Conclusion of Law 8 of D.03-04-057, inserting the word "not":

> "The limitations on DA eligibility of load from replacement or relocation of facilities as adopted in the modifications herein to D.02-03-055 are **not** intended to prohibit load changes associated with normal usage, variations for accounts at other locations that are eligible for DA as of September 20, 2001." (Correction in bold face.)

3. The Petition to clarify D.02-03-055 filed by Southern California Edison is hereby denied.

4. The modifications to the Commission's standstill policy proposed jointly by Pacific Gas & Electric Company and San Diego Gas & Electric Company are hereby denied.

5. Comments shall be filed 15 business day after the effective date of this order to develop the record on the issues outlined above regarding a process to distinguish or delineate "normal load fluctuations" from load growth in excess of permissible Direct Access suspension limits, and means by which to recognize, measure, and bill such excess load on a bundled service basis. Reply comments shall be due 10 business days thereafter.

This order is effective today.

Dated _____, at San Francisco, California.